IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1039 OF 2007

Smt. Sonabai Dnyanu Bharade & Ors. ...Appellants
Vs.
Smt. Vithabai Gundu Kenwade
(Since deceased through her legal heirs & Ors.) ...Respondents

Mr.R.S.Ghadge Advocate i/b. Mr. A.S. Desai, Advocate for the Appellants
Mr. V.B. Rajure Advocate for the Respondents 1 to 4

CORAM: SMT.ROSHAN DALVI,J.
DATED: 11TH JUNE, 2007

P.C.

1. The Appellant's Advocate rightly contended and consented that the only point to be decided in this Appeal is whether Suit No.253 of 2000 filed by him in the Court of Joint Civil Judge (S.D.) Kolhapur is the same in effect as the earlier Suit No.963 of 1991. The Respondent No.2 had filed the earlier Suit between the parties being R.C.S. No.1075 of 1985. That Suit has been decreed. That Suit was between family members. It was in respect of ancestral land. Upon the decree in that Suit passed as far back as in 1988 a partition came to be effected. The shares of the family members were determined. Defendants 1 and 2 in that Suit were given possession of their shares. Thereafter the Defendant No.1

sold off her share to Defendants 2 and 3, who are her sister and brother. The Appellant filed Suit No.263 of 1991 challenging the decree in Suit No.1075 of 1985. Even in this Suit essentially that decree is challenged. The challenge earlier made has been carried up to the Apex Court. The Appellant's proceedings have been consistently dismissed. After such dismissal in their earlier Suit No.963 of 1991, Suit No.253 of 2000 has been filed.

2. The learned Judge has rightly considered the effect and substance of both the Suits. It has been observed that the subject matter in the earlier Suit between the parties being Suit No. 1075 of 985 which has been decreed and sought to be executed has been the same. The challenge to that decree being on the ground of illegality and mistake in law has been consistently negatived. After the dismissal of the Suit no appeal was preferred, and hence, that dismissal came to be final and binding. It is seen that the number of attempts have been made to set aside the original decree passed on merits relating to the same subject matter and between the parties. Hence, the Suit has been correctly dismissed.

3. The Appeal is dismissed under the provisions of Order 41 Rule 11(1) of the C.P.C.

(SMT. ROSHAN DALVI, J.)